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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Calling Party Pays Service Offering	)	WT Docket No. 97-207
in the Commercial Mobile Radio Services	)	

GTE SERVICE CORPORATION
OPPOSITION TO PETITION FOR RECONSIDERATION

In accordance with Section 1.429(f) of the Commission's Rules, 47 C.F.R. § 1.429(f), GTE Service Corporation and its below-listed affiliates[1] ("GTE") hereby submit this opposition to the Petition for Reconsideration filed in the above-captioned proceeding by the Public Utilities Commission of Ohio ("PUCO").[2] The PUCO challenges the Commission's declaratory ruling that a commercial mobile radio service ("CMRS") offering provided with a calling party pays ("CPP") service option – as defined by the FCC – is classified and regulated as a CMRS service under Section 332 of the Communications Act.[3]

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[1] GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., GTE West Coast Incorporated, and Contel of the South, Inc., GTE Communications Corporation, and GTE Wireless Incorporated.

[2] The Public Utilities Commission of Ohio, Petition for Reconsideration and Clarification and Further Comments on Jurisdictional Issues, WT Docket No. 97-207 (filed August 16, 1999) ("PUCO Petition").

[3] Calling Party Pays Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 97-207 (rel. July 7, 1999) (Declaratory Ruling and Notice of Proposed Rule Making) (hereinafter Declaratory Ruling and Notice).

As discussed in detail below, the Commission's declaratory ruling is correct as a matter of law and the PUCO's arguments challenging it are without merit. Accordingly, the PUCO's petition for reconsideration should be denied without delay.[4]

I. BACKGROUND

In the Declaratory Ruling, the Commission finds that CPP offerings – defined as services in which "a CMRS provider makes available to its subscribers an offering whereby the party placing the call to a CMRS subscriber pays at least some of the charges associated with terminating the call, including most prominently charges for the CMRS airtime"[5] – qualify as CMRS services and, therefore, fall within the regulatory structure set forth in Section 332(c) of the Communications Act.[6] The Commission bases this determination on an analysis of the statutory definition of "commercial mobile service" and the FCC's rules and policies implementing that definition.[7] In particular, in accordance with these provisions, the Commission concludes that CPP offerings are

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[4] In its Petition, the PUCO also argues that even if CPP offerings are properly classified as CMRS services, the FCC lacks authority to adopt mandatory, uniform nationwide rules regarding CPP. *See* PUCO Petition at 10-17. Because the FCC has not issued any final decisions concerning nationwide CPP rules, this aspect of the PUCO Petition is improper for inclusion in a petition for reconsideration. *See* 47 C.F.R. § 1.429(a) ("[a]ny interested person may petition for reconsideration of a *final action* in a proceeding conducted under this subpart . . . .") (emphasis added). The only final action taken in the FCC's *Calling Party Pays* rule making thus far is the agency's declaration that CPP services are CMRS offerings. Accordingly, GTE is limiting its opposition to this issue and plans to address PUCO's arguments concerning the FCC's ability to adopt uniform, nationwide CPP rules in its rule making reply comments.

[5] Declaratory Ruling and Notice, ¶ 2.

[6] *Id.*, ¶¶ 8, 14-19.

"mobile services" that are offered "for profit" and that make "interconnected service" available (1) to the public, or (2) to such classes of eligible users as to be effectively available to a substantial portion of the public.[8]

As mentioned, the PUCO seeks reconsideration of the Commission's decision in this regard. In support of its reconsideration request, the PUCO asserts that CPP is not a CMRS service but rather is merely "a billing option."[9] The PUCO also argues that CPP offerings do not meet the "interconnected service" prong of the CMRS definition.[10] GTE addresses these arguments in the following section.

II. THE FCC's DECLARATORY RULING CLARIFYING THAT CPP OFFERINGS ARE CMRS SERVICES IS CORRECT AS A MATTER OF LAW

At the outset, as indicated in its comments filed in response to the Notice of Proposed Rule Making portion of this proceeding, GTE wholeheartedly agrees with the Commission's analysis and decision clarifying that CPP offerings are CMRS services.[11]

(...Continued)

[7] *Id.*, ¶¶ 15-16. *See also* 47 U.S.C. § 332(d)(1); 47 C.F.R. § 20.3.

[8] *Declaratory Ruling and Notice,* ¶¶ 15-16.

[9] PUCO Petition at 6.

[10] *Id.* at 9.

[11] Comments of GTE, WT Docket No. 97-207, at 5 (filed Sept. 17, 1999). Numerous other commenters responding to the Notice of Proposed Rule Making supported the Commission's decision in this regard as well. *See, e.g.,* Comments of America One Communications, Inc. at 4; Comments of Bell Atlantic at 1-2; Comments of BellSouth Corp. at 7; Comments of The Cellular Telecommunications Industry Ass'n at 1,7; Comments of Nextel Communications, Inc. at 1; Comments of The Personal Communications Industry Ass'n at 25; Comments of The Rural Telecommunications Group at 2.

In particular, if the underlying service has already been classified as a "CMRS" offering, this fundamental fact remains unchanged regardless of whether the called party or the calling party pays for the call. The service is still a CMRS offering and is still regulated under Section 332(c). As the Commission observes in the Declaratory Ruling and Notice, the statutory definition of "commercial mobile service" does not reference who pays for the call, nor do either the statute or the legislative history suggest that an offering that satisfies the definition of a CMRS service should be excluded from that definition simply because the calling party has accepted responsibility for paying the CMRS airtime charges.[12] As a result, there is no basis for concluding that CMRS services, such as CPP, that happen to be purchased by a calling party as opposed to the called CMRS subscriber, are not CMRS services.

Against this backdrop, GTE submits that the PUCO's arguments attacking the Commission's declaratory ruling are without merit. The PUCO has failed to present any valid basis for reconsideration of the Commission's determination that CMRS services with a CPP option remain CMRS services. Accordingly, the Commission's decision should be affirmed.

CPP Is Not Simply A Billing Option. As mentioned, the PUCO first argues that CPP is not a CMRS service but simply a "billing option." In support of this position, the PUCO states that "CPP will create new charges that local wireline customers will pay for calls that are made today without any additional charge."[13] The PUCO also stresses

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[12] Declaratory Ruling and Notice, ¶ 17.

[13] PUCO Petition at 6-7.

that "[t]here is no change in the underlying 'service' involving a CPP call versus a traditional wireline-to-cellular call" because "the wireline and cellular networks . . . function the same way."[14]

In GTE's view, the fact that CPP will result in local wireline customers paying "for calls that are made today without any additional charge"[15] is irrelevant to whether CPP is or is not a CMRS offering. Of course the existence of a CPP option will cause wireline callers – and wireless callers – that elect to call a CPP subscriber to incur charges that they would not have incurred under today's predominant "called party pays" regime. That observation is axiomatic.

With CPP, however, the calling party – whether calling from a wireline or wireless phone – will have established an independent relationship with the CMRS service provider essentially allowing that party to purchase CMRS service for purposes of the call in question. The existence of that relationship between the caller and the CMRS service provider in no way alters the fundamental fact that the underlying service being purchased is a CMRS service.

The PUCO's observation that there is no change in the underlying service involved in a CPP call versus a traditional wireline-to-cellular call is equally unhelpful to its argument.[16] In point of fact, GTE agrees that the technical make-up of the underlying service remains the same regardless of whether the call is a traditional

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[14] *Id.* at 7.

[15] *Id.* at 6-7.

[16] *See id.* at 7.

wireline-to-cellular call or a CPP call. In either case, the CMRS airtime remains classified and regulated as a CMRS service regardless of whether the called or the calling party elects to purchase that service.

Significantly, the Declaratory Ruling addresses and dispenses with the PUCO's attempt to assert a contrary position. In particular, the Commission points out that "[w]hether the payment obligation to the CMRS provider for using that airtime falls on the party initiating the call (CPP) or on the party receiving the call, the underlying transmission and wireless network facilities remain the same as those currently used to provide CMRS and . . . would be subject to Section 332 of the Act."[17] The Commission further explains that, "[i]n agreeing to pay for the call to the CMRS subscriber, the calling party becomes, for the purpose of completing the call, a customer of the CMRS provider."[18] The CPP nature of the call simply transfers "some payment aspects of the call to a customer other than the owner of the mobile phone."[19] As the Commission notes, this "does not in any fashion alter the regulatory classification of the call."[20]

CPP Service Is "Interconnected Service." There is likewise no merit to the PUCO's argument that CPP does not meet the "interconnected service" criterion of the CMRS definition. In support of this claim, the PUCO maintains that CPP does not

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[17] Declaratory Ruling and Notice, ¶ 17.

[18] *Id.* On this basis, the Commission analogizes placement of a CPP call to casual calling services because the call to the CMRS subscriber does not require the calling party to establish an account with or presubscribe to the CMRS provider. *Id.*

[19] *Id.*

[20] *Id.*

involve the provision of "interconnected service" because CPP "only connects a CMRS customer to a private network consisting of only the customers of that same CMRS provider and does not connect a CPP customer to the public switched network."[21] On this basis, PUCO contends that CPP does not "give subscribers the capability to communicate to or receive communications from all other users or the public switched network."[22]

The PUCO's argument misses the point, which is that the technological composition of the underlying CMRS service does not change simply because the calling party pays for the call. If the underlying service is interconnected – which it has to be in order to be classified as a CMRS service – the service is still interconnected regardless of whether the called party or the calling purchases it.

The Commission should not be persuaded by PUCO's attempt to make much of the fact that (1) a CPP subscriber cannot receive CPP calls unless the caller agrees to pay the charges, and (2) a CPP caller has limited call placement ability. The seminal inquiry in determining whether a mobile service satisfies the "interconnected service" element of the statutory definition is whether the service "gives its customers the capability to communicate to or receive communication from other users of the public switched network."[23] A CMRS subscriber who happens to be a CPP called party and a

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[21] PUCO Petition at 9.

[22] *Id.*

[23] *Implementation of Sections 3(n) and 332 of the Communications Act,* 9 FCC Rcd 1411, 1434 (1994) (Second Report and Order), *recon. pending.*

CPP calling party both have this capability, regardless of whether the caller chooses to complete the individual CPP call at issue.[24]

III. CONCLUSION

The Public Utilities Commission of Ohio has failed to demonstrate any valid basis in support of its request for reconsideration of the Commission's Declaratory Ruling in this proceeding. As discussed herein, the Commission's decision classifying CPP offerings as CMRS services is entirely correct and should be affirmed, and the PUCO's request for reconsideration of that decision should be denied without delay.

Respectfully submitted,

GTE Service Corporation and its
Designated Affiliates

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[24] Further rebuking PUCO's argument that CPP service is not "interconnected service," Section 20.3 of the Commission's Rules, 47 C.F.R. § 20.3, states that "a mobile service offers interconnected service even if the service allows subscribers to access the public switched network only during specified hours of the day, or if the service provides general access to points on the public switched network but also restricts access in certain limited ways." As such, even if the Commission agreed that CPP restricts access to the public switched network, such a restriction does not undermine the fact that the service provided is still "interconnected service."

CERTIFICATE OF SERVICE

I, Robin Walker, hereby certify that on this 4th day of October, 1999, I caused copies of the foregoing "Opposition to Petition for Reconsideration" in WT Docket No. 97-207 to be sent via first class, postage prepaid mail, to the following persons:

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